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# Ruling

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**Category:** Foreign Banks

**NOTICE\***

**Subject:** Foreign Bank Representative Offices – Asset management services

**No:** 2004-07

**Issue:** The issue was whether the business activities of a foreign bank's (FB) representative office in support of the FB's asset management services were limited to "promoting the services of" the FB or "acting as a liaison between" the FB and its Canadian clients as permitted under the *Foreign Bank Representative Offices Regulations* (Regulations).

**Background:** The FB provides asset management services outside Canada. Its clients include Canadian institutional investors. All agreements between the FB and the Canadian clients are negotiated and executed by the FB outside Canada, and all investment decisions are made by the FB's asset managers located outside Canada. The FB maintains a representative office (RO) in Canada that undertakes the following activities in support of the FB's asset management services:

1. meets with prospective clients to describe the FB's services;
2. based on information generated outside Canada, answers questions about the FB's services, key personnel, investment process and philosophy, and management fees;
3. conducts meetings with each client to review information originating from outside Canada regarding the client's account performance and investment holdings and to answer the client's questions, but does not provide any investment advice and/or counseling;
4. arranges conference calls or meetings between clients and the FB's staff outside Canada; and
5. forwards information, including investment advice, generated by the FB's personnel outside Canada to clients.

The RO informs Canadian clients and prospective clients that its activities in Canada are limited to the above activities and that all investment decisions are made by the FB outside Canada.

**Considerations:** The Regulations limit the activities of ROs to promoting the services of the FB and acting as a liaison between clients of the FB and other offices of the FB. The *Bank Act* and the Regulations do not provide guidance on the meaning of the terms "promote" or "acting as a liaison".

Promotion

In *Bank of Nova Scotia v. British Columbia (Superintendent of Financial Institutions)*,<sup>1</sup> the British Columbia Court of Appeal concluded that the plain meaning of the word "promote" encompasses activities in furtherance of the sale of a product or service, but without the authority of binding any party. The views expressed by the Court are consistent with various dictionary definitions of the word "promote". For example, *Black's Law Dictionary*<sup>2</sup> and *New Shorter Oxford English Dictionary*,<sup>3</sup> respectively, define the word "promote" to mean:

- To contribute to growth, enlargement or prosperity of; to forward; to further; to encourage; to advance.
- Further the development, progress or establishment of (a thing); encourage, help forward or support actively.

The RO's activities include describing the FB's services to clients and prospective clients and answering questions on those services. The RO conducts those activities in furtherance of the sale of the FB's services, but does not have the authority to bind the FB to providing services to Canadian clients. Therefore, in carrying out those activities, the RO is promoting the FB's services, as permitted under the Regulations.

Acting as a liaison

We are not aware of any Canadian jurisprudence that interprets the term "acting as a liaison". *New Shorter Oxford English Dictionary* defines the verb "liaise" as "establish communication or cooperation, act as a link".

The RO conducts meetings with Canadian clients and reviews with these clients information, including investment advice, generated by the FB's personnel outside Canada. Clients are made aware of the limited nature of the RO's role, including that all investment decisions are made by the FB outside Canada. In addition, the RO arranges conference calls or meetings between clients and the FB's staff outside Canada. In conducting these activities, the RO is acting as an information link or a "go-between" between the FB and its Canadian clients, as permitted under the Regulations.

**Conclusion:** OSFI concluded that the RO's business activities in support of the FB's asset management services were limited to "promoting the services of" the FB or "acting as a liaison between" the FB and its Canadian clients. Therefore, OSFI concluded that the RO was conducting business activities in Canada as permitted under the Regulations.

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<sup>1</sup> (2003) 223 D.L.R. (4<sup>th</sup>) 126 (B.C.C.A).

<sup>2</sup> 5<sup>th</sup> edition (St. Paul: West Publishing, 1979).

<sup>3</sup> 3<sup>rd</sup> edition (Oxford: Oxford University Press, 1993).

**Legislative References:** Paragraph 522(a) of the *Bank Act* states that an FB may, with the approval of the Superintendent and

- (i) subject to any terms and conditions that are attached to the approval, and
  - (ii) subject to and in accordance with rules that are prescribed in relation to the operation of ROs and the conduct of their personnel,
- maintain ROs in Canada that are registered with the Superintendent in the prescribed manner.

Section 6 of the Regulations stipulates that no RO shall undertake a business activity other than

- (a) promoting the services of the FB or an affiliate of the FB other than an affiliate incorporated in Canada; or
- (b) acting as a liaison between clients of the FB and other offices of the FB or of affiliates of the FB other than an affiliate incorporated in Canada.

**Table of Concordance:** The legislation of other federal financial institutions does not contain similar provisions.

\* Rulings describe how OSFI has applied or interpreted provisions of the federal financial institutions legislation, regulations or guidelines to specific circumstances. They do not negate the need to obtain any necessary approval of the transaction under the relevant federal financial institutions legislation. Rulings are not necessarily binding on OSFI's consideration of subsequent transactions as these transactions may raise additional or different considerations. Legislative references in a Ruling are not meant to substitute provisions of the law; readers should refer to the relevant provisions of the legislation, regulation or guideline, including any amendments that came into effect subsequent to the Ruling's publication.